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RIGHTS OF THE CHILD

Written statement\* submitted by Human Rights Advocates Inc., a non-governmental  
organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[30 January 2003]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

### The juvenile death penalty

1. Human Rights Advocates (HRA) supports the work of the Special Rapporteur on extrajudicial summary, or arbitrary executions to abolish the juvenile death penalty. HRA submits the following updated information on juvenile offender executions.
2. International law clearly prohibits the execution of individuals who were younger than 18 years old at the time of the commission of the crime ("juvenile death penalty"). In 2000, the Sub-Commission on the Promotion and Protection of Human Rights affirmed that the prohibition of the juvenile death penalty is customary international law.<sup>1</sup> The Sub-Commission recognized that since 1997 several Commission resolutions confirm this customary international law. HRA supports these resolutions and agrees that the prohibition of the juvenile death penalty has become customary international law. Indeed, HRA considers that this customary international law has risen to the level of jus cogens as evidenced by the recent decision by the Inter-American Commission on Human Rights concluding that the prohibition of the execution of juveniles constitute a jus cogens norm.
3. The international community has demonstrated widespread and near universal compliance with the prohibition of the juvenile death penalty. Since 1993, six countries have executed juveniles. The United States executed 16 juveniles while the other five nations executed a total of 8 juveniles: Democratic Republic of Congo (1 in 2000), Iran (3:1 in 1999, 1 in 2000, 1 in 2001), Nigeria (1 in 1997), Pakistan (2: 1 in 1997, 1 in 2001), and Yemen (1 in 1993).<sup>2</sup> In 2001, only two nations, other than the United States, executed juveniles: Iran (Mehrdad Youseffi, age 16 at the time of offense) and Pakistan (Ali Sher, age 13 at time of offense). More significantly, in 2002, the United States was the only country to execute juveniles.
4. The countries that have executed juvenile in the past, with the exception of the United States, have since either abolished the practice of executing juveniles, adopted laws prohibiting the execution of juveniles, acknowledged that such practices are against their laws, or denied that such practices have taken place. In October of 1994, Yemen passed legislation raising the minimum age for the imposition of the death penalty to 18. In addition, HRA commends Pakistan for its recent efforts to abolish the practice of executing juveniles. In July 2000, Pakistan passed the Juvenile Justice System Ordinance, abolishing the death penalty for juveniles. In July 2002, the President Musharrah of Pakistan commuted the death sentences of 74 juvenile offenders to life sentences. Subsequent legislation supported the commutations. Federal law also prohibits the execution of juveniles in Nigeria. HRA commends Iran for complying with the prohibition of the executions of juveniles this past year. Since 1990, Iran has executed 7 juveniles (the most of any nation, other than the United States). HRA encourages Iran to continue to comply with international norms relating to the abolition of the juvenile death penalty.
5. Despite near uniform compliance around the world, the United States has continued to maintain the practice of executing juveniles. In fact, the United States was the only country in 2002 to violate the prohibition of the juvenile death penalty. During the last year three inmates who had been convicted of crimes they committed before they

were 18 years old were put to death in Texas. They were Napoleon Beazley, T.J. Jones and Toronto Patterson. Further, four more juveniles in Alabama, Virginia, Louisiana and Texas were sentenced to death in 2002 bringing the total of death row inmates convicted of crimes that took place before they were adults to 80 inmates as of December 31, 2002.

6. There have been movements in the United States to do away with the juvenile death penalty. Montana and Indiana passed laws that abolished the death penalty for juveniles. HRA commends Kentucky Governor Patton statement that he will support a bill banning the use of the death penalty for juveniles and his consideration for clemency in the case of Kevin Stanford. HRA also commends the Georgia Board of Pardons and Paroles for granting clemency to Alexander Williams as well as Mississippi Governor Musgrove for granting a temporary stay of execution for Ron Foster pending further judicial decisions. Furthermore, HRA commends the Missouri Supreme Court for granting a temporary stay of execution in the case of Christopher Simmons in light of the recent United States Supreme Court decision *Atkins v. Virginia*.<sup>3</sup>

7. In the United States public support of the juvenile death penalty has remained low for the past 40 years.<sup>4</sup> A recent Gallup Poll conducted May 2002 found that only 26% favored the juvenile death penalty, while 69% opposed it.<sup>5</sup> Further, in Texas where all of the executions took place in 2002, according to a Houston Chronicle poll, only one third of the population supported the death penalty for juveniles.<sup>6</sup> Additionally, a poll done by the UK Survey Research Center in 2000 found in Kentucky that 63% percent of the population opposed the juvenile death penalty.<sup>7</sup> Though the popularity of the death penalty in United States has fluctuated, the support for the juvenile death penalty has never been strong.

9. The prohibition of the execution of juveniles has risen to the level of *jus cogens*. Under Article 53 of the Vienna Convention on the Law of Treaties, a norm attains *jus cogens* status when it is: 1) general international law; 2) accepted by a large majority of states as a whole; 3) immune from derogation; and 4) modifiable only by a new norm of the same status. The prohibition of the juvenile death penalty satisfies all these elements. First, the prohibition of the juvenile death penalty is general international law because of the numerous treaties that prohibit it: International Covenant on Civil and Political Rights (ICCPR); Convention on the Rights of the Child (CRC); Geneva Convention Relative to the Protection of Civilian Persons in Time of War; and American Convention on Human Rights. Also, resolutions of the Sub-Commission on Human Rights, the Commission on Human Rights, the Economic and Social Council and the General Assembly oppose the juvenile death penalty. Second, nations have exhibited near unanimous acceptance of the prohibition of the juvenile death penalty. In 2002, the United States was the sole violator and in 2001, only three countries (Iran, Pakistan, and the United States) executed juveniles. Third, the prohibition of the juvenile death penalty is non-derogable. Article 4 of the ICCPR states there shall be "no derogation" from Article 6, which prohibits the juvenile death penalty. Fourth, there is no emerging norm of the same status that contradicts the current norm. Accordingly, under the Vienna Convention, the prohibition of the juvenile death penalty is a *jus cogens* norm from which no country is allowed to deviate.<sup>8</sup>

7. Furthermore, on October 22, 2002, the Inter-American Commission on Human Rights issued a decision, concluding that the execution of offenders under the age of 18 at the time of the crime constitutes a norm of international customary law and a jus cogens norm.<sup>9</sup> Previously, in 1987, in *Roach and Pinkerton v. United States*, the Inter-American Commission had recognized that the prohibition of the execution of juveniles constituted a jus cogens norm but did not find consensus as to the age of majority for defining this norm.<sup>10</sup> However, the *Domingues* decision firmly established that since 1987, the jus cogens norm has evolved to establish 18 as the minimum age for the imposition of the death penalty.<sup>11</sup>

8. HRA recommends:

-That the Commission request that the Economic and Social Council seek an International Court of Justice advisory opinion on whether the juvenile death penalty violates customary international law and jus cogens norm. An ICJ opinion on the juvenile death penalty will further assist the Commission on Human Rights in its effort to end the juvenile death penalty.

- That all states that still maintain the juvenile death penalty

- a. Abide by jus cogens in complete abolition of death penalty sentences imposed upon persons under the age of 18 at the time of the offense.
- b. Submit annual reports to the Special Rapporteur of extrajudicial killings outlining efforts towards prevention of juvenile offender executions and abolition of the practice of all together.

- That the governments that have not abolished the juvenile death penalty from their laws report on impediments to abolishing the practice all together such as reporting decisions made within federal and local jurisdictions, reporting its progress and addressing any impediments, as well as what steps they have taken to abolish the practice.

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<sup>1</sup> The Death Penalty, Particularly in Relation to Juvenile Offenders, Resolution 1999/4, adopted Aug. 24, 1999. E/CN.4/SUB.2/RES/1999/4 (1999); The Death Penalty in Relation to Juvenile Offenders, Resolution 2000/17, adopted Aug. 17, 2000. E/CN.4/Sub.2/RES/2000/17 (2000)).

<sup>2</sup> See *Juvenile Death Penalty in Other Countries*, (visited Jan. 29, 2003) <http://www.deathpenaltyinfo.org/juvintl.html>.

<sup>3</sup> *Atkins v. Virginia*, 536 U.S. 304 (2002)

<sup>4</sup> American Bar Association, *Overview of the Juvenile Death Penalty Today*, (visited Jan. 29, 2003) <http://www.abanet.org/crimjust/juvjus/jdpfactsheet02.pdf>.

<sup>5</sup> Gallup Organization, May 14, 2002, Question ID: USGALLUP.02MY06, R45D

<sup>6</sup> Steve Brewer, *A Deadly Distinction: Part IV; Lingering Issues; Juvenile Cases: Just 1 in 4 in county thinks death appropriate*, Houston Chron., Feb. 7, 2001, at A13

<sup>7</sup> Joseph Gerth, *Death Penalty for Juveniles Opposed*, The Courier-Journal, Oct. 25, 2002 at 1B

<sup>8</sup> See Connie de la Vega, *Amici Curiae Urge the U.S. Supreme Court to Consider International Human Rights Law in Juvenile Death Penalty Case*, 42 SANTA CLARA L. REV. 1041, 1043-50 (2002).

<sup>9</sup> See *Domingues v. United States*, Report No. 62/02, Case No. 12.285, ¶ 84-85.

<sup>10</sup> See *Domingues*, ¶ 18.

<sup>11</sup> See *Domingues*, ¶ 103.